No. 10-180

In the Supreme Court of the United States

COOK COUNTY, ILLINOIS,

Petitioner,

v.

MARLITA THOMAS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION

Daniel S. Alexander
Counsel of Record
Law Offices of Daniel S. Alexander
820 W. Jackson Blvd., Suite 300
Chicago, Illinois 60607
(312) 263-8005
danielsalexander@hotmail.com

Christopher R. Smith
Amanda C. Antholt
James Baranyk
Smith, Johnson & Antholt, LLC
112 S. Sangamon St., 3rd Floor
Chicago, Illinois 60607
(312) 432-0400

Attorneys for Respondent

October 27, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800 890 5001

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INTRODUCTORY STATEMENT

Petitioner has presented no "compelling reasons" for its Petition for a Writ of *Certiorari*, as discussed in detail below. *See* Sup. Ct. R. 10. In search of a reviewable issue, Petitioner attempts to manufacture a non-existent circuit split based on a purported *per se* rule never remotely articulated or implicated by the Seventh Circuit's Amended Opinion. In order to do so, Petitioner relies upon objections to jury instructions that were not raised below and issues with the formatting of the verdict form identical to that proposed by defendants below. Indeed, the issue relied upon here as the very premise for Petitioner's *per se* rule argument regarding errors in the jury instructions was raised for the first and only time in this matter by the dissent to the Seventh Circuit's Amended Opinion denying rehearing. These jury instructions were in fact proposed by defendants below and the entire argument relied upon by Petitioner has been waived.

Petitioner then makes poorly developed arguments that general non-controversial holdings of other circuits are in conflict with the manufactured *per se* rule. For good measure, Petitioner throws in an almost completely undeveloped argument that its Seventh Amendment right to a fair trial was violated by a verdict form that broke plaintiff's claims down by count, just as the verdict form proposed by defendants did, and that the Seventh Circuit created a split with sister circuits that still recognize a right to a fair trial. (Pet. 21-23; Record 464 at 69-78.)

Apparently in an effort to bolster its erroneous claim that the plaintiff "invited" the jury "to assess damages by defendant," Petitioner attaches a facsimile

verdict form that appears to indicate that the jury was given separate lines to enter damages against the two defendants in the policy and practice claim. (Pet. 22, App. C, 95a.) However, as the scanned actual verdict form demonstrates, there was only one line for damages in this count, as with all the counts in the verdict form. (Resp. App. A.) While the jury did, in that one count, make an allocation of fault between the two defendants, there was nothing in the verdict form or instructions that invited them to do so. In fact, the jury was carefully instructed not to duplicate damages between the various counts, and plaintiff's attorneys in closing argument emphasized to the jury that they could not duplicate damages between the counts. (Tr. 1873-74.)

In reaching its decision, the Seventh Circuit simply followed longstanding case law, with no disagreement with this Court's precedent or any sister circuits, and read the verdict in a manner consistent with the instructions and law. *See, e.g.*, *Fairmount Glass Works v. Cub Fork Coal Co.*, 287 U.S. 474, 484-85, 53 S.Ct. 252 (1933) ("To regard the verdict as inconsistent on its face is to assume that the jury found for the plaintiff and failed to perform its task of assessing damages... Appellate courts should be slow to impute to juries a disregard of their duties, and to trial courts a want of diligence or perspicacity in appraising the jury's conduct."); *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 364, 82 S.Ct. 780 (1962) ("Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way."); *Havoco of America, Ltd. v. Sumitomo Corp. of America*, 971 F.2d 1332, 1343 (7th Cir. 1992) ("our review of jury instructions is limited to the determination of whether the jury was

misled in any way and whether it had an understanding of the issues and its duty to determine those issues."). Now, contrary to longstanding precedent, Petitioner asks this Court to reverse the trial court's and Seventh Circuit's careful attempts to read the verdict in a consistent manner and strive instead to find inconsistency in the verdict. This Court should summarily deny the Petition.

REASONS FOR DENYING THE PETITION

I. Petitioner's Arguments Regarding Errors in the Jury Instructions and Verdict Form Were Not Raised Below and Should Not Be Considered

It is well settled that issues not raised in the courts below should not be considered on review by this Court. *See Rita v. United States*, 551 U.S. 338, 360, 127 S.Ct. 2456 (2007) ("Rita did not make this argument below, and we shall not consider it."); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4, 123 S.Ct. 518 (2002) ("Because this argument was not raised below, it is waived."); *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 362, 101 S.Ct. 1146 (1981) (a question that "was not raised in the Court of Appeals...is not properly before us").

In an effort to find a "compelling reason" for this Court to take this case, Petitioner latches on to criticisms of certain jury instructions raised *sua sponte* by Judge Sykes in dissent of the denial of the requested *en banc* rehearing. Petitioner's entire initial argument for *certiorari* is premised on now-purported errors in those instructions. (Pet. 12-13.) As Petitioner repeats, Judge Sykes in dissent characterized this set

of instructions as a "bewildering hodgepodge of instructions – some inapplicable, some simply wrong." Picking up on the dissent, Petitioner now argues that this "tidal wave of contradictory instructions" apparently nullified the "no duplication of damages" instruction and resulted in the problematic award of damages by claim. Ironically, however, the instructions now complained about for the first time were in fact the Fifth Circuit pattern instruction number 15.14, proposed by all defendants and plaintiff. (*See* Resp. App. B, defendants' proposed instruction number 39, filed on behalf of all defendants; Record 464 at 64-65.) Petitioner did not object to these "bewildering" instructions at trial. (Tr. 1655-1815.)

At no time during any of the proceedings below – not in the district court, not on appeal, and not in the petition for *en banc* rehearing – did Petitioner or any other party raise an objection to these instructions. (*Id.*) The first time that any critique of these instructions was raised by anyone in this case was Judge Sykes in dissent on the petition for *en banc* hearing. Petitioner never before objected to the cited instructions, but it now asks this Court to grant *certiorari* to review those instructions for error.

Likewise, the dissent heavily relied upon by Petitioner found it problematic that the verdict form was broken down by count. Surprisingly, as was even noted by the dissent, defendants' proposed verdict form "was just as bad" as the actual verdict form used. *Thomas v. Cook County Sheriff's Dept.*, 604 F.3d 293, 315 (7th Cir. 2010) (Sykes, J., dissenting in part from denial of rehearing *en banc*). Like the verdict form that was ultimately used, defendants' proposed form

(filed on behalf of all defendants) also provided for damages to be awarded by count, with the same single line for damages for each count as plaintiff's verdict form. (Record 464 at 69-78.) Because all of Petitioner's claims of error were not raised below, they are waived. "This court sits as a court of review. It is only in exceptional cases coming from the federal courts that questions not pressed or passed upon below are reviewed." *Duignan v. United States*, 274 U.S. 195, 200, 47 S.Ct. 566, 568 (1927). The questions raised by Petitioner do not present an exceptional case, the issues now raised have been waived, and the petition should be summarily denied.

II. Because the Decision Below Creates No "Compelling Reason" for *Certiorari*, Petitioner Manufactures a Non-Existent *Per Se* Rule to Create Conflict Where There Is None

The court of appeals did not even consider the argument (which was never raised) that the "no duplication of damages" instruction was nullified by the allegedly erroneous instructions which followed, much less set forth a *per se* rule answering that question. The rule that Petitioner asserts was established below—that "a 'no duplication' instruction cures any other error regarding damage instructions in a Section 1983 case"—severely misstates the rationale and holding of the court of appeals in this matter. Indeed, the court of appeals did not even address or consider the issue of the Fifth Circuit pattern instruction proposed by defendants that Petitioner now claims caused a problem with the verdict. No reading of the decision from the court of appeals can

find the rule that Petitioner claims was established and which now forms the basis of the petition.

Far from a *per se* rule, the court below explained that several different approaches may be taken where a jury improperly divides the damages among defendants. The court made clear that which approach is taken is determined by which better reflects the intent of the jury. *Thomas,* 604 F.3d at 311-312. "Which of these approaches should be taken in a specific case will depend on a district court's interpretation of the jury's action in that case, in light of the instructions the jury was given and the verdict form that was used." *Id.* at 312. Indeed, the only rules pronounced by the court in this matter are well established rules consistently followed not only by the Seventh Circuit but by circuits throughout the country: (1) that jury awards are interpreted to avoid inconsistency, and (2) juries are presumed to have followed the court's instructions.

The approach taken in this case, reading the instructions and the verdict forms as a whole, was to presume that the jury followed the no duplication of damages instruction and simply divided the compensatory damages award among the claims, exactly as plaintiff's attorneys suggested in closing arguments. (Tr. 1873-74.) Therefore, the district court took the permissible approach of aggregating the different awards from the various counts. On the policy and practice count, as with the other counts, the verdict form gave a single compensatory damages line, as well as separate lines to indicate liability for the County and the Sheriff. (Resp. App. A.) It should be noted that for all but one of the counts, the jury did not allocate the damages among the defendants. (*Id.*) On

that single compensatory damages line for this claim, however, the jury wrote in two numbers: Cook County – $3,000,000.00, Sheriff of Cook County – $1,000,000.00. (*Id.*) Consistent with the instruction not to duplicate damages, as well as a common sense reading of the verdict form, the trial court and Seventh Circuit found that the jury intended to award $4,000,000.00 on that claim. Therefore, following long-standing precedent that juries are presumed to follow their instructions and that the verdict should be interpreted to avoid inconsistency, the awards were aggregated. In so holding, neither the trial court nor the Seventh Circuit created any kind of *per se* rule as alleged by Petitioner.

III. This Ruling of The Court of Appeals Does Not Create a Conflict For This Court to Resolve

Far from establishing the *per se* rule that a no duplication instruction supplants any other erroneous instructions (an issue never raised and not addressed by the majority below), the court of appeals followed the same rationale as is set forth in all of the other circuit cases which Petitioner now claims are in conflict.

(A) The Seventh Circuit Ruling in This Matter Is Not In Conflict With Any of the Cases Cited by Petitioner

The question argued and ruled upon by the court of appeals in this matter was how to address a jury verdict that allocates damages among jointly and severally liable defendants for a single injury. *Thomas,* 605 F.3d at 311-12. In contrast, none of the

cases cited in the Petition, which are claimed to be in conflict, address this issue, except for *Watts v. Laurent*, 774 F.2d 168 (7th Cir. 1985). *See Carey v. Piphus*, 435 U.S. 247 (1978); *Memphis Community School Dist. v. Stachura*, 477 U.S. 299 (1986); *Uphoff Figueroa v. Alejandro*, 597 F.3d 423 (1st Cir. 2010); *Wilson v. Morgan*, 477 F.3d 326 (6th Cir. 2007); *Fleming v. Harris*, 39 F.3d 905, 907 (8th Cir. 1994); *Oviatt By & Through Waugh v. Pearce*, 954 F.2d 1470, 1472 (9th Cir. 1992); *Street v. Parham*, 929 F.2d 537, 539-40 (10th Cir. 1991).

Watts, however, is easily distinguishable from this case. In *Watts*, the jury was instructed that it was to "decide each defendant's case separately as if it were a separate lawsuit." *Watts*, 774 F.2d 168 at 175. In addition, separate verdict forms were tendered for each defendant. *Id.* Unlike in this case, there was no instruction on not duplicating damages. The jury awarded $40,000.00 against each of the defendants. *Id.* The Seventh Circuit reluctantly ordered a remittitur to the $40,000.00 on the basis that the erroneous instructions and verdict forms created a situation where, if the jury was presumed to follow its instructions, the award of $40,000.00 would be the award of total joint and several damages. *Id.* at 180-81. This is far from the situation here, where the verdict form and the instructions properly told the jury not to allocate and not to duplicate damages. Thus, applying the same presumption here as was applied in *Watts* – that the jury followed its instructions – yields the opposite result.

None of the other cited cases even relate to the issue of allocation of damages. Petitioner cites *Carey* for the proposition that, in the absence of proof of

actual injury, a plaintiff may only recover nominal damages. (Pet. 17.) This principle has nothing to do with the issues decided by the Seventh Circuit here. Similarly, Petitioner cites *Stachura* for the proposition that compensatory damages cannot be awarded on the abstract value of a constitutional right. (Pet. 17.) Again, this holding and the Seventh Circuit opinion at issue here pass like ships in the night.

In *Figueroa*, the First Circuit took up the question of purported errors in jury instructions in a case in which the jury found for the defendants and against the plaintiff. *Uphoff Figueroa v. Alejandro*, 597 F.3d 423, 427 (1st Cir. 2010). The issue there was the plaintiff's request that the court give a detailed summary of the acts that made up his retaliation claim in the jury instructions. *Id.* at 434. The court rejected that argument finding that "[t]he court's instructions accurately captured the law that plaintiffs must show that working conditions were "unreasonably inferior to the norm for the position." *Id.* Thus, neither the jury nor the court in *Figueroa* addressed the issue pertinent to this case: how to resolve verdict forms where the jury allocates damages between jointly and severally liable parties for a single indivisible injury.

Likewise, the Sixth Circuit in *Wilson v. Morgan*, 477 F.3d 326 (6th Cir. 2007), did not address any of the pertinent issues relating to allocation of damages. Instead, the issues in that case were challenges to the probable cause and comparative fault instructions. *Id.* at 341-42. The court found that the probable cause instruction was not confusing or incorrect and any error in the comparative fault instruction was harmless because the plaintiffs prevailed on their intentional tort claim. *Id.* at 342. Neither did the

Eighth Circuit in *Fleming*, the Ninth Circuit in *Oviatt*, or the Tenth Circuit in *Street* address the issue of allocation of damages. Each of the cases concerned the propriety of substantive jury instructions, issues that were not part of the Seventh Circuit's decision below. *Fleming*, 39 F.3d at 907 (finding no error in the probable cause instruction that was given at trial); *Oviatt By & Through Waugh*, 954 F.2d at 1481 (finding no error in jury instruction on causation in a policy and practice claim); *Street*, 929 F.2d at 539-40 (finding no error in jury instructions on excessive force and qualified immunity).

None of these cases present any conflict with the Seventh Circuit's ruling in this matter. They all include, and apparently are cited for, the general proposition that the instructions should be considered as a whole when addressing objections to jury instructions. The court below, however, was not addressing objections to jury instructions because no such objections were raised by the County. Further, that proposition was not called into question by the court's ruling below. Indeed, the Seventh Circuit articulated the same rule in reaching its conclusion. *Thomas*, 604 F.3d at 312. Accordingly, this Court should reject Petitioner's transparent attempt to manufacture a conflict in the circuits.

(B) The Approach Taken By This Court And The Circuits To Interpret Jury Verdicts To Find Consistency Does Not Violate The Law Of Damages

Petitioner then appears to claim that because it is jointly and severally liable for damages, the jury's apportionment of damages between two defendants on

one count violates an abstract "law of damages." (Pet. 19-20.) However, for the reasons argued throughout this response, and because defendants were jointly and severally liable, the apportionment as it relates to any "law of damages" is irrelevant. Petitioner remains jointly and severally liable for all damages and therefore its overall responsibility for plaintiff's damages is unchanged. Petitioner cites *Northington v. Marin*, 102 F.3d 1564 (10th Cir. 1996) and *Patrick v. City of Detroit*, 906 F.2d 1108 (6th Cir. 1990) as purported evidence of a circuit split regarding joint and several liability. However, *Northington* merely states that joint and several liability can apply to indivisible injuries in Section 1983 cases. 906 F.2d 1108 at 1568-69. *Northington* does not consider apportionment of damages, jury instructions, or verdict forms and does not apply here. *Patrick* does examine the effect of joint and several liability on a damages award; however, *Patrick* does not involve aggregation or verdict forms. 906 F.2d at 1115-16. *Patrick* held that the trial court's error in refusing to admit certain evidence implicated the rights of all defendants who were jointly and severally liable. *Id.* This issue is not at play in this matter.

As stated throughout this brief, the circuits are not in disagreement about the need to approach a jury's findings with care and respect. Instead of taking Petitioners' approach of desperately hunting for possible flaws in a jury's verdict, this Court and the circuits below infer consistency and understanding where possible. *Gallick v. Baltimore & O. R. Co.*, 372 U.S. 108, 119, 83 S. Ct. 659 (1963) ("[I]t is the duty of the courts to attempt to harmonize the answers, if it is possible under a fair reading of them: 'Where there is a view of the case that makes the jury's answers to

special interrogatories consistent, they must be resolved that way.'") (quoting *Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Ltd.*, 369 U.S. 355, 364, 82 S. Ct. 780 (1962)). *See also, e.g., Davignon v. Hodgson*, 524 F.3d 91, 109 (1st Cir. 2008) ("When a party claims that jury verdicts are inconsistent, we attempt to reconcile the jury's findings, by exegesis if necessary.") *cert. denied*, 129 S. Ct. 727, 172 L. Ed. 2d 726 (2008) (internal citation omitted).

(C) Contrary to Petitioner's Claims, There is No Circuit Split With Regard to The Seventh Amendment's Guarantee of a Fair Trial

Finally, Petitioner announces that its Seventh Amendment right to a fair trial was violated after the trial court read a Fifth Circuit pattern instruction also proposed by defendants, and used a verdict form that broke damages down by count, just as defendants' proposed verdict form did. (Pet. 21-23; Record 464 at 64, 69-78.) This argument, that the Seventh Circuit's holding has created a circuit split because the Third and Fifth Circuit still require a fair trial under the Seventh Amendment, is both troubling and inadequate. In support of its sweeping claim, Petitioner offers nothing but circular generalities. Petitioner provides the non-controversial and general supposition that Section 1983 claims sound in tort. (Pet. 22.) Petitioner then appears to argue that its right to a fair trial was violated because: (1) fair trial guarantees attach to Section 1983 actions, and (2) it lost after the jury received the instructions that defendants requested. *Id.* Certainly, Petitioner cannot contend that the Seventh Circuit has abolished the right to a fair trial, and in so doing created a

circuit split, yet that is apparently the argument advanced as a compelling reason to grant *certiorari*. (Pet. 22-23.)

Latiolais v. Whitely, 93 F.3d 205 (5th Cir. 1996), *Bailey v. System Innovation, Inc.*, 852 F.2d 93 (3rd Cir. 1998), and *Lemons v. Skidmore*, 985 F.2d 354 (7th Cir. 1993), casually cited by Petitioner, are not in conflict in the court's decision below and do not support Petitioner's claim. In *Latiolais*, the plaintiffs were not allowed to testify or call witnesses at their own jury trial, over the objections of their counsel. 93 F.3d 205 at 207. This is entirely different from Petitioner's claims here. *Bailey* reviewed a mandamus action involving freedom of speech and had nothing to do with jury instructions. 852 F.2d 93. In *Lemons*, which involved the presentation of the plaintiff in leg irons, the Seventh Circuit did not even reach the fair trial issue and remanded on other grounds. 985 F.2d 354, at 357. Petitioner has not cited one case that is on point with regard to the supposed violations of its Seventh Amendment rights. This is because it cannot. The Seventh Circuit has not abandoned the Bill of Rights, and Petitioner's argument is patently frivolous.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition for Writ of *Certiorari*. Therefore, Respondent respectfully requests that the Petition be denied.

RESPECTFULLY SUBMITTED,

Daniel S. Alexander
Counsel of Record
Law Offices of Daniel S. Alexander
820 West Jackson Boulevard, Suite 300
Chicago, Illinois 60607
312-263-8005
danielsalexander@hotmail.com

Christopher R. Smith
Amanda C. Antholt
James Baranyk
Smith, Johnson & Antholt, LLC
112 S. Sangamon St., 3rd Floor
Chicago, Illinois 60607
312-432-0400

Attorneys for Respondent

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APPENDIX A

VERDICT FORM A

[*Fold-out Exhibit, see next 5 pages*]

VERDICT FORM A

We, the jury, find as follows:

Plaintiff's Federal Denial Of Medical Care Claim

Plaintiff is awarded $ 150,000.00 in compensatory damages. (If you found against Plaintiff on her denial of medical care claim, fill in the number "0".)

Place an "x" in the appropriate line for the manner in which you believe a Defendant to be liable to the Plaintiff. For example, if you believe that a Defendant denied medical care to Norman Smith, then indicate an "x" on the "Yes" line where that Defendant is indicated. If you believe that a particular Defendant is not liable then indicate an "x" on the "No" line where that particular Defendant is indicated.

	Yes	No
As to Donetta Davis		X
As to Jesus Facundo	X	
As to Darryl Houston		X
As to Douglas Johnson		X
As to Alex Sanchez	X	
As to Louis Thiemecke		X
As to Terrence Toomey	X	
As to Peggy Westbrook		X

Plaintiff's Federal Policy and Practice Claim

Plaintiff is awarded $ Cook County-$3,000,000.00 Sheriff of Cook County-$1,000,000.00 in compensatory damages. (If you found against Plaintiff on her policy and practice claim, fill in the number "0".)

Place an "x" in the appropriate line for the manner in which you believe a Defendant to be liable to the Plaintiff. For example, if you believe that a Defendant is liable to plaintiff for a particular policy or practice, then indicate an "x" on the "Yes" line where that Defendant is indicated. If you believe that a particular Defendant is not liable then indicate an "x" on the "No" line where that particular Defendant is indicated.

1. For the failure to have a system in place so that the medical requests of the detainees were reviewed promptly by properly trained medical staff and acted upon in a reasonable manner:

	Yes	No
As to Cook County	X	

2. For the practice of severely under-staffing correctional officers:

	Yes	No
As to the Sheriff of Cook County	X	
As to Cook County	X	

3. For the failure to timely fix broken video monitors in the Cook County Jail:

	Yes	No
As to Cook County	X	

4. For the falsification of Daily Tier Logs:

	Yes	No
As to the Sheriff of Cook County		X

Plaintiff's Wrongful Death Claim

Plaintiff is awarded $ 150,000.00 in compensatory damages. (If you found against Plaintiff on her wrongful death claim, fill in the number "0".)

Place an "x" in the appropriate line for the manner in which you believe a Defendant to be liable to the Plaintiff. For example, if you believe that a Defendant is liable for wrongful death, then indicate an "x" on the "Yes" line where that Defendant is indicated. If you believe that the Defendant is not liable then indicate an "x" on the "No" line where that Defendant is indicated.

	Yes	No
As to Donetta Davis		X
As to Jesus Facundo	X	
As to Darryl Houston		X
As to Douglas Johnson		X
As to Alex Sanchez	X	
As to Louis Thiemecke		X
As to Terrence Toomey	X	
As to Peggy Westbrook		X

Plaintiff's Survival Claim

Plaintiff is awarded $ 150,000.00 in compensatory damages. (If you found against Plaintiff on her survival claim, fill in the number "0".)

Place an "x" in the appropriate line for each manner in which you believe a Defendant to be liable to the Plaintiff. For example, if you believe that a Defendant is liable to plaintiff on the survival claim, then indicate an "x" on the "Yes" line where that Defendant is indicated. If you believe that a Defendant is not liable then indicate an "x" on the "No" line where that particular Defendant is indicated.

	Yes	No
As to Donetta Davis		X
As to Jesus Facundo	X	
As to Darryl Houston		X
As to Douglas Johnson		X
As to Alex Sanchez	X	
As to Louis Thiemecke		X
As to Terrence Toomey	X	
As to Peggy Westbrook		X

Plaintiff's Intentional Infliction of Emotional Distress Claim

Plaintiff is awarded $ 0.00 in compensatory damages. (If you found against Plaintiff on her Intentional Infliction of Emotional Distress Claim, fill in the number "0".)

Place an "x" in the appropriate line for each manner in which you believe a Defendant to be liable to the Plaintiff. For example, if you believe that a Defendant is liable to plaintiff on the intentional infliction of emotional distress claim, then indicate an "x" on the "Yes" line where that Defendant is indicated. If you believe that a Defendant is not liable then indicate an "x" on the "No" line where that particular Defendant is indicated.

	Yes	No
As to Donetta Davis		X
As to Jesus Facundo		X
As to Darryl Houston		X
As to Douglas Johnson		X
As to Alex Sanchez		X
As to Louis Thiemecke		X
As to Terrence Toomey		X
As to Peggy Westbrook		X

1. Sonia Patterson Foreperson
2. Ellie Dents
3. Debby L. Whitworth
4. Mary [illegible]
5. Yagnuti Patel
6. James L. Kaye
7. James C. Rapp
8. Sandra E. Shelley

APPENDIX B

PROPOSED Jury Instructions by Sanchez, Peggy Westbrook, Cook County Sheriff, Officer Davis, Officer Facundo, Officer Houston, Officer Johnson, Officer Theimecke, Officer, Toomey, Cook County (Gallagher, Daniel)

[Filed December 11, 2007]

[Excerpt]

* * *

[p.64]

You must not award compensatory damages more than once for the same injury. For example, if the plaintiff prevails on two claims and establishes a dollar amount for his injuries, you must not award him any additional compensatory damages on each claim. The plaintiff is only entitled to be made whole once, and may not recover more than he has lost. Of course, if different injuries are attributed to the separate claims, then you must compensate the plaintiff fully for all of his injuries.

With respect to punitive damages, you may make separate awards as to each Individual Defendant on each claim that plaintiff has established. There can be no punitive damages assessed on plaintiff's *Monell* Policy Claims against Cook County and the Cook County Sheriff's Office or plaintiff's state wrongful death and survival claims.

You may impose damages on a claim solely upon the defendant or defendants that you find are liable on that claim. Although there are multiple Individual Defendants in this case, it does not necessarily follow that if one is liable, all or any of the others also are liable. Each defendant is entitled to fair, separate and individual consideration of his case without regard to your decision as to the other defendants. If you find that only one defendant is responsible for a particular injury, then you must award damages for that injury only against that defendant.

You may find that more than one defendant is liable for a particular injury. If so, the plaintiff is not required to establish how much of the injury was caused by each particular defendant whom you find liable. Thus, if you conclude that the defendants you find liable acted jointly, then you may treat them jointly for purposes of calculating damages, except for the purposes of punitive damages. If you decide that two or more of the defendants are jointly liable on a particular claim, then you may simply

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determine the overall amount of damages for which they are liable, without determining individual percentages of liability.

Defendants' Instruction No. 39
Fifth Circuit of Model Jury Instructions-Civil 15.14 as Modified

____ Accepted
____ Rejected
____ Modified